87-1471

Supreme Court, U.S.
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SEP 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-3129

IN THE

# Supreme Court of the United States

October Term, 1986

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Clarence Willard Franklin,
*Appellant, Pro Se*

v.

Office of Personnel Management,
*Respondent*

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**ON APPEAL FROM COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

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## JURISDICTIONAL STATEMENT

Clarence Willard Franklin
Appellant, Pro Se
Cedar Tree Farm
P.O. Box 6
Milford, CA 96121

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56 pp

## RULE 15

## JURISDICTIONAL STATEMENT

**.1 (a) Questions Presented**

A. Pursuant to 28 USC 1652, on what basis can the decision below be sustained?

B. Pursuant to art I, sect. 8, cl 17 (Const.), must a state give consent to cession of sovereignty?

C. Can a state condition its consent?

D. Where a state has conditioned consent, may a federal executive agency abrogate the condition?

E. Did the condition imposed by California Government Code Section 126(e) guarantee the appellant, a resident of lands ceeded, the civil right of California Civil Code Section 1583?

F. Does the doctrine of *Stokes v Adair* (1959) 361 US 816, 4 LEd2d 62, 80 SCt 56, 265 F2d 662, apply?

G. If the doctrine of *Stokes* does not apply, why not?

H. Is the abrogation of state law such a legislative act that it is prohibited to an executive agency by the doctrine of separation of powers?

I. Or, may an agency so abrogate upon delegation by Congress?

J. What was the delegated authority by which OPM abrogated?

K. May an executive agency abrogate upon its own initiative?

L. Does the abrogation of the common law without notice violate the individual rights of a citizen?

M. Does abrogation of the common law without

Question Presented (contd.)

notice violate 5 USC 552?

N. Did OPM commit the act proscribed by 18 USC 2071?

O. If so, was such act authorized by 5 USC 8347(a)?

**.1 (b) List of Parties**

Not Applicable

All parties included in Caption.

**.1 (c) (1) Table of Contents**

TABLE OF CONTENTS


| | Page |
|---|---|
| (a) Questions Presented | 2-3 |
| (b) List of Parties | 3 |
| (c) (1) Table of Contents | 3-4 |
| (2) Table of Authorities | 4 |
| (3) Table of Cases | 4-8 |
| (d) Reports Delivered Below | 8-9 |
| (e) (i) Nature of Case & Pertinent Statutes | 9 |
| (ii) Dates of Entry of Judgement, Notice of Appeal & Court in which Appeal Filed | 9 |
| (iii) Statutory & Other Provision to Confer Jurisdiction | 10 |
| (f) Constitution, Statutes, Treaties, etc. | 10-11 |
| (g) Statement of the Case | 11-15 |
| (h) Reasons Why Case Should Be Reviewed | 15-18 |
| (i) Jurisdiction Appealed | 18 |
| (j) Appendix | 18-54 |
| (ii) Other Opinions, etc. | 19-33 |
| (iii) Copy of Judgement Appealed | 33-34 |
| (iv) Copy of Notice of Appeal | 34-35 |
| (v) Other Appended Materials | 35-54 |

Table of Contents (contd.)

A. Cardiology Report ..... 35-41
B. Definition of Police Officer ..... 41-43
C. Stats Cited, etc..... 43-52
D. Index..... 53-54

**.1 (c) (2) Table of Authorities**

**A. 4 Am Jur 2d P.546**

"However, where a Constitutional question is properly raised the upper court has exclusive jurisdiction..."

**.1 (c) (3) Table of Cases**

1. *Action for Children's TV v FCC* (1977) 564 F2d 458
2. *Adkins v Commonwealth* (1940) 131 ALR 1312, 175 VA 590, 9 SE2d 349
3. *ALA Schecter Poultry Corp. v U.S.* 295 US 495, 79 LEd 1570, 55 S. Ct. 837, 97 ALR 947
4. *Allen-Bradley Local v Wisconsin Empl Rel Bd.* 315 US 740, 86 LEd 1154, 62 S. Ct. 820
5. *Backrack v Norton* (1889) 132 US 337, 33 LEd 377, 10 S.Ct. 106
6. *Bong v Alfred S. Campbell Art Co.* (1909) 214 US 236, 53 LEd 979, 2 SCt 759

7. *Borak v Biddle* 142 F2d 278
8. *Burstyn v Wilson* 343 US 495, 96 LEd 1098, 72 SCt 777
9. *Carmichael v Southern Coal & Coke Co.* 301 US 495, 81 LEd 1245, 57 SCt 868, 109 ALR 1327
10. *Chase Ntl Bank v Mobile & O.R. Co.* (1952) 30 FSupp 565
11. *Cole v Rush* (1955) 54 ALR 2d 1137, 289 P2d 450, 45 C2d 345
12. *Collins v Yosemite Park & C. Co.* (1938) 304 US 518, 58 SCt 1009, 82 LEd 1502
13. *Colorado Interstate Gas Co. v Federal Power Commission* (1953) 348 US 492, 99 LEd 583, 75 SCt 467, 209 F2d 717
14. *Davies Warehouse Co. v Bowles* 321 US 144, 88 LEd 635, 64 SCt 474
15. *DeCanas v Bica* (1976) 424 US 351, 47 LEd2d 43, 96 SCt 933
16. *EPA v Brown* 431 US 99, 52 LEd2d 166, 97 SCt 1635
17. *Erie R. Co. v Tompkins* (1938) 304 US 64, 82 LEd 1188, 58 SCt 817, 114 ALR 1487
18. *Federal Trade Commission v Bunte Bros.* 312 US 349, 85 LEd 881, 61 SCt 580
19. *Finfer v Caplin* (1965) USDC East. Dist NY, 344 F2d 38
20. *Florida v US* 282 US 194, 75 LEd 291, 51 SCt 119
21. *Fussell v US* (1939) CA 5 Fla, 100 F2d 995
22. *Georgia v US* (1973) 411 US 526, 36 LEd2d 292, 93 SCt 1702
23. *Gernand v US* (1969) 188 Ct Cl 544, 412 F2d 1190
24. *Gilbert v Bagley* (1980) USDC MD,NC, WS Div, 492 FSupp 714
25. *Group v Finletter* (1952) DC Dist Col, 108 FSupp 327

26. *Hepburn v Griswold* (1870) 75 US 603, 19 LEd 513, 8 Wall 603
27. *Hilton v Sullivan*, 334 US 323. 92 LEd 1416, 68 SCt 1020
28. *Humphrey's Exr. v US* (1935) 295 US 602, 79 LEd 1611, 55 SCt 869
29. *Illinois C.R. Co. v Public Utilities Commission*, 321 US 144, 88 LEd 635, 64 SCt 474
30. *Illinois Cent. R. Co. v US*, 52 Ct Cls 53
31. *International R. Co. v Davidson* (1922) 257 US 506, 66 LEd 341, 42 SCt 179
32. *International Union v Wisconsin Empl. Rel. Bd.*, 336 US 245, 93 LEd 651, 69 SCt 516
33. *James v Dravo Const. Co.* (1937) 302 US 134, 82 LEd 155, 58 SCt 208, 114 ALR 318
34. *Jenks v US*, 353 US 657, 1 LEd2d 1103, 77 SCt 1007
35. *Karzewski v Baltimore & OR Co.* USDC ND-IL ED, 274 FSupp 169
36. *Kelly v Washington* (1937), 302 US 1, 82 LEd 3, 58 SCt 87
37. *Kendall v US*, 37 US 524, 9 LEd 1181, 12 Peters 524
38. *Kunz v NY* 340 US 290, 95 LEd 280, 71 SCt 312
39. *Legal Tender Cases*, 79 US 457, 20 LEd 287, 12 Wall 655
40. *Loan Assoc. v Topeka* (1875), 87 US 655, 22 LEd 455
41. *McCormack v US*, 204 CtCls 371
42. *Marshall v Crotty* (1950) USDC MA, 185 F2d 622, 88 FSupp 30
43. *Meads v US* (1897), CA 6 MI, 81 F 684
44. *O'Neal v US*, 322 US 729, 88 LEd 1565, 64 SCt 945, 140 F2d 908, 151 ALR 1474
45. *Order of Railway Conductors v Pitney*, 326 US 561, 90 LEd 318, 145 F2d 351

46. *Panama Refining Co. v Ryan.* 293 US 388, 79 LEd 446, 55 SCt 241
47. *Phelps v Siegfried* (1892), 142 US 602, 35 LEd 1128, 12 SCt 391
48. *Rice v Santa Fe Elevator Corp.* 331 US 218, 91 LEd 1447, 67 SCt 1146
49. *Sandstrom v California Horse Racing Board.* 335 US 814, 93 LEd 369, 69 SCt 31, 3 ALR2d 90, 335 US 905, 93 LEd 439, 69 SCt 404
50. *Schwartz v US Dept. Justice* (1977), 595 F2d 888, 435 FSupp 1203
51. *Shreveport v Cole* (1889), 129 US 36, 32 LEd 589, 9 SCt 210
52. *Stokes v Adair* (1959), 265 F2d 662, 361 US 816, 4 LEd2d 62, 80 SCt 56
53. *Symonds v US.* 21 CtCls 148, 120 US 46, 30 LEd 557, 7 SCt 411, 22 CTCls 481
54. *Tarble's Case* (1872), 80 US 397, 20 LEd 597, 13 Wall 397
55. *Union Bridge Co. v US.* 204 US 364, 51 LEd 523, 27 SCt 367
56. *US v Birdsall* (1914), 233 US 223, 58 LEd 930, 34 SCt 512
57. *US v Butler* (1936), 297 US 1, 80 LEd 477, 56 SCt 312
58. *US v Davis* (1889) 132 US 334, 33 LEd 390, 10 SCt 105
59. *US v Germain* (1879), 99 US 508, 25 LEd 482
60. *US v Grimaud.* 220 US 506, 55 LEd 563, 31 SCt 480
61. *US v 34.5 acres in Ozark County, MO* (1952) USDC WD MO SD, 107 F Supp 565
62. *Virginian R. Co. v System Federation* (1937), 300 US 515, 81 LEd 789, 84 F2d 641
63. *Wettre v Hague* (1948) USDC MA, 168 F2d

825, 74 FSupp 396

64. *Yacovone v Bailar* (1979) DC Dist Col 470 FSupp 777
65. *Yonkers v US*, 320 US 144, 88 LEd 635, 64 SCt 474
66. *Zimmerman v Poindexter* (1947) USDC HW, 74 FSupp 933

**.1 (d) Reports:**

A. Court of Appeals, Federal Circuit, No. 87-3129, June 8, 1987
FOUND: OPM **not** arbitrary, capricious, etc.
HELD: Federal regulations supercede California law
AFFIRMED:

B. Merit Systems Protection Board, No. SF08318610441, Final Decision, November 18, 1986
AFFIRMED:

C. Merit Systems Protection Board, No. (above)
Initial Decision, June 18, 1986
FOUND: OPM **not** abuse discretion, etc., **not** in violation of statute or regulation
HELD: "OPM is not governed by common law but by enacted regulations."
AFFIRMED:

D. Office of Personnel Management, No. CSA-2 444 527
Final Decision, February 26, 1986
FOUND: Documents posted within time limit, delivered after time limit
HELD: Common law rule of posting is abrogated; documents untimely
AFFIRMED:

E. Office of Personnel Managment No. (above)
Second Initial Decision, January 3, 1986

FOUND: Herlong Police Officers do not enforce criminal law
HELD: Common law offenses against public peace and order are not criminal laws

**.1 (e) (i) Nature of Case and Pertinent Statutes**

The nature of the proceeding is essentially the equitable one of plea for specific performance. The appellant, at age 61, is above the age specified (50). His law enforcement service of 22 years exceeds that specified (20). He therefore pleads that he receive the annuity specified in 5 USC 8336(c).

The statutory basis for jurisdiction of the appellant is:
5 USC 8346(d)
5 USC 7703(a)(1)
5 USC 7703(c)(1)
5 USC 7703(c)(2)
28 USC 2101(c)
28 USC 1254(2)
28 USC 1254(3)

**.1 (e) (ii) Dates of entry and judgment and notice of appeal**

The date of the entry of that judgment sought to be reviewed is June 8, 1987.
The date that the notice of appeal was filed is August 11, 1987.
The court in which such notice was filed is the United States Court of Appeals for the Federal Circuit.

**.1 (e) (iii) Statutory and other provision to confer Jurisdiction**

The appellant relies upon the statute 28 USC 1254 (2) and 28 1254 (3). In the latter, appellant would allege serious error of law in opinion below. In the former he would allege serious issues of Constitutional law, and assert the authority of 4 Am Jur 2d P.546.

**.1 (f) Constitution, treaties, statutes, etc.**

(Text in Appendix) Pg. 43-52

A. 5 USC 8336 (c)
B. 5 USC 8335 (b)
C. 18 USC 2071
D. 18 USC 241
E. 5 USC 8331 (20)
F. 5 USC 552
G. United States Constitution
(1) art. I, Sect. 9 )
(2) art. III, Sects. 1 & 2)
(3) Amendment 5 ) Presented only to
(4) Amendment 7 ) illustrate common law
(5) Amendment 8 ) rights of United
(6) Amendment 9 ) States citizens
(7) Amendment 11 )
H. California Civil Code, Sect. 1582
I. California Civil Code, Sect. 1583
J. United States Constitution
art. I, sect. 8, cl 17
K. California Government Code, Section 126(c)
L. 5 USC 8347(d)
M. 5 USC 7703 (a) (1)
5 USC 7703 (c) (1)
5 USC 7703 (c) (2)
N. 5 USC 8347 (a)
O. United States Constitution, art. VI, cl. 2

art. VI cl. 2
P. 28 USC 1652
Q. 28 USC 2101 (c)
R. 28 USC 1254 (2) & (3)
S. United States Constitution, Preamble, cl. 3

**.1 (g) Statement of the case**

The War Department built an ammunition depot in the desert of Lassen County, California. The operation consisted of some half dozen Army officers managing a civilian workforce approximating 1000. Because of the isolated location, it was necessary to build also the city of Herlong to house and to otherwise provide for the human needs of the workers. They, with their dependents, comprised a city of 4500, the largest in the county. While peace and order were maintained in the ammunition areas by enforcing the civil law through the exercize of the proprietory right, in the city of Herlong the proprietory right had not been conveyed because of pre-existing easements; or, government had surrendered the same by letting premesis to employees and concessionaires. In the city, peace and order could be maintained only by means of enforcing the criminal laws. With cession of sovereignty to the United States by the state of California, the Lassen County Sheriff lost his police power within the city. As the military is not permitted to maintain civil order, it was necessary for the community of Herlong to organize a police force, which it did. However, the federal government, as chief freeholder, commanded, administered, and paid such force. In the tradition of the American West, Herlong became a "company" town and that company was the United States. Police were always distinguished from the ammunition guards. Ultimately, those having the primary duty of law enforcement were designated "police officer" catgegory GS 083. Those have the primary duty

of protection were designated "security guard" category GS 085. The category of the appellant was always that of GS 083 policeman.

Warren Joseph Young, Chief of Police at Herlong, applied for his law enforcement retirement. In 1976, the Civil Service Commission (CSC) disapproved, claiming that his primary duty was protection and that his law enforcement duties were incidental. As Chief Young retired soon thereafter (on another statute), the appellant erroneously presumed that Herlong police were deemed law enforcement.

On September 15, 1979, the appellant, at age 53, completed his 20th year of police service. On December 25, he was stricken with extreme chest pain and his health began to decline. On January 19, 1981, while a resident of Herlong, and at the request of his superior, he applied for his law enforcement retirement which was denied without explanation and without "due process." The superior then demanded that appellant undergo physical examination. On February 9, his private cardiologist began submitting clinical reports specifying paroxysmal supraventricular tachycardia plus several other cardiac dysfunctions. On March 9, an Army physician declared him to be totally disabled for the position of police officer. On June 30, he became subject to mandatory separation. On September 21, OPM disapproved disability retirement because, "The applicant has not established the presence of a medical condition which has caused a deficiency in service." With the final adverse decision, OPM forwarded his file to appellant. The cardiology reports were not included. On September 24, 1982, the appellant discovered that the cardiology reports had been removed from his file. Recognizing such as a crime, he reported same to the criminal investigator. On appeal to MSPB, appellant received disability retirement on September 8, 1983.

Statement of the Case (contd.)

Because of its greater benefits, appellant continued to prosecute his claim for law enforcement annuity. In a letter dated November 2, 1984, OPM issued its first initial decision, referring to the Young case and denying the claim. Appellant submitted timely request for reconsideration. In a letter dated January 3, 1986, OPM issued its second initial decision, affirming the first, and again offering appellant opportunity to request reconsideration within 30 days. As the 30th day was Sunday, the request was posted the following Monday, February 3, and was delivered to OPM on February 7. In a letter dated February 26, OPM made its final decision dismissing appellant's claim because of untimeliness.

Upon appeal to MSPB, OPM abandoned its argument that the Herlong police officer is not a law enforcement officer, alleging only the issue of timeliness. Appellant had, in his requests for reconsideration, raised the equitable issue of unjust enrichment, the error of fact in the Young case which grossly underestimated the hazard of Herlong law enforcement, and all else that he knew about the nature of criminal law enforcement. In his appeal to MSPB, appellant explained the factual difference between Herlong and other military installations. In his response to the order of MSPB, appellant explained the common law distinction between the constructive receipt (posting) and actual receipt (delivery). He pointed out that in rejecting the common law, OPM also rejected Federal Regulation (5 CFR Ch II (1-1-85) Sect. 1201.23 (b)). He also claimed his right to rely upon the common law. He also raised the issue of abuse of discretion and clean hands, and the arbitrary manner in which OPM had replaced the common law with its own law. And, his original appeal raised the issue of discrimination.

On June 18, 1986, the initial decision was that "OPM is governed not by common law, but by

enacted regulations," and rejecting appellant's arguments of notice, clean hands and abuse of discretion.

On July 15, 1986, appellant petitioned MSPB for review. He argued that regulations must be contained within the statute, and the statute must be contained within the Constitution, offering a half page of case law citations. He raised the question of his alleged duty to submit a second request for reconsideration. He asserted that he had performed his legal duty by the timely submission of the first; that the second submission was gratuitous. If, as alleged, the second was untimely, such untimeliness was irrelevant. Again, he asserted the issue of notice, explaining that if OPM had notified it would abrogate the common law, he would have submitted earlier; or would have requested an extension of time. He argued that OPM cannot create a liability without a duty. He reasserted his argument of clean hands or quasi-estoppel by a quarter page of citations.

On July 21, appellant applied to MSPB for stay of proceeding and on August 4, he petitioned the Court of Appeals, Federal Circuit, for writ of certiorari with regard to the abrogation of common law, state law, and compact law (terms of cession). Both were denied. On November 18, the final decision of MSPB affirmed the initial, yet without resolving the Constitutional issues, and without case law citations. From the very beginning, appellant had argued that the Young decision was unreasonable. If the Chief of Police had no responsibility to enforce the law, who did? Before the Court of Appeals, he also argued that the Young Decision was contradictory to OPM's own distinction between police GS 083 and guard GS 085, and continued to argue the Constitution, common law, state law, and compact law. On June 8, 1987, Court of Appeals affirmed MSPB, rejecting appellant's arguments, asserting federal regulations over state and compact law under the Supremacy Clause, finding no fault in OPM, and

ignoring other issues raised by appellant including discrimination.

**.1 (h) Reasons why case should be reviewed**

The chief reason why this court should examine this case is that OPM has become "a loose cannon on the ship of state." Opinion below has permitted it to remain so. When any executive agency is permitted to free itself from the restrictions of statutes, case law, and the Constitution, our system of limited government is not merely endangered -- it is doomed. If OPM is not rebuked by this Court, then government of men will have replaced government of law and the American dream will be relegated to history.

The second reason to review this case is that the Old World system of government of men inevitably results in the persecution of some class of persons, at the whim of those in power. Apart from malice, there seems no reasonable explanation why, when it was in possession of the earlier Young decision, OPM required more than three years to make its final decision. Neither can it be explained why OPM imposed upon the appellant a duty to submit a second request for reconsideration. Nor can it be explained why OPM abandoned its fantastic theory of law enforcement when the appellant appealed; nor the failure to notify appellant that it had abrogated the common law. Nor why it removed the critical cardiology reports from appellant's file. Once the hypothesis is accepted that OPM has acted in malice and unfair discrimination against GS 083 policemen, then the case can be understood as revealing an ingenuous plan to deny such officers their just compensation under the statute. The hypothesis is as follows:

Step No. 1. was the encouragement and support of the popular prejudice against peace officers,

and particularly those employed by the military. The program of unjust enrichment would thus become socially acceptable. This is very effective in which most Herlong policemen transfer or terminate prior to completing their 20 years.

Step No. 2. was developed to defeat such policemen as Chief Young who were undismayed by prejudice. Against them would be argued a fantastic theory of law enforcement, not only a theory in contradiction to regulations and practice, but also the absurd fantasy that at Herlong there is no one responsible (having the primary duty) for law enforcement and that criminal laws are enforced incidentally when employees complete their other duties.

Step No. 3. was developed for policemen, such as the appellant, who would challenge and refute the fantastic theory upon appeal. Such was applying the rule that "justice delayed is justice denied" by abusing the administrative process through delay in the hope that the appellant, a cardiac patient, would die before he got the chance to appeal.

Step No. 4. was invented in case the appellant lived. If he did so, he would gain law enforcement status and OPM would have been negligent in its failure to perform mandatory separation. To defeat such accusation, the critical cardiology reports were removed from his file. Thus, OPM could claim that he was not disabled and that it was in the public interest that he continue in the service.

Step No. 5. was the recognition that defeat of the mandatory provisions would throw the burden back upon the appellant to initiate a voluntary separation, where he would again be subject to Step No. 3.

Step No. 6. was the setting of a trap for the appellant. It involved several elements:

A. As an American, the appellant would be expected to follow common law. Or, as a Californian,

he would follow that of California. Both laws recognized the principle of constructive receipt, that acceptance is effected upon the posting of acceptance.

B. As an individual, the appellant tends to be a profound, yet slow, thinker who would probably use all the time available to develop his arguments.

C. The highly irregular procedure of issuing a second initial decision would be initiated, offering appellant opportunity to submit a second request for reconsideration.

D. The common law would be abrogated.

E. The appellant would not be notified of such abrogation.

F. The appellant would submit his second request as timely by common law, but untimely by administrative law.

G. OPM could defeat appellant on appeal by means of the false allegation of untimeliness.

H. If the appellant were timely by administrative law, OPM would argue on appeal that appellant, a peace officer who enforced the common law offenses against public peace and order, that such offenses were not criminal laws.

I. If the appellant were untimely by common law, the fantastic theories of law enforcement would be abandoned.

J. OPM would allege that the timely submission of a gratuitous document as condition precedent to retirement annuity.

K. OPM would defeat the equitable claim of appellant for his 22 years of police service.

The hypothesis presented above is just that -- a hypothesis. Yet, it is the sole theory known to the appellant which fits the facts. Thus, until a better theory is offered, it must be entertained by the reasonable mind. Further, if the crime of concealment was in fact committed, then the felonious intent necessary would be

# APPENDICES

Reasons why (contd.)

capable of lesser wrongs as well.

If that government of men such as the present superiors of OPM are permitted to so unfairly discriminate against a minority category as has been done in the instant case, who is next? Where would the persecution end, if other agencies follow the precedent of OPM? The appellant pleads with this Court to return our system back to a government of law.

The third reason to raise the questions is the equitable one of specific performance. The appellant enforced the criminal laws of the peace for 22 years. He is now 61 years of age. If, by its acts in the Record, OPM can deny him his equitable right of just compensation, then Clause Three of the Preamble to the Constitution shall have been repealed and the establishment of justice rescinded. The appellant pleads for specific performance of 5 USC 8335 (b).

**.1 (i) Jurisdiction appealed**

Not Applicable

Appeal is from Court of Appeals, Federal Circuit, not from District Court.

**.1 (j) Appendix**

(i) Opinions, orders, findings, etc. of judgment sought to be reviewed.

(Such entirely included in copy of judgment appealed from--section (iii).

**.1 (j) (ii) Other opinions, orders, etc.**
**A. Final decision of MSPB**

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

CLARENCE W. FRANKLIN, Appellant,
v.
OFFICE OF PERSONNEL MANAGEMENT, Agency.

DOCKET NUMBER
SF08318610441

DATE: NOV. 18, 1986

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

ORDER

After full consideration, the board DENIES appellant's petition for review of the initial decision issued on June 18, 1986, because it does not meet the criteria for review set forth at 5 C.F.R. Sec. 1201.115. This is the Board's final order in this appeal. The initial decision is now final. 5 C.F.R. Sec. 1201.113(b).

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal, if the court has jurisdiction. 5 U.S.C. Sec. 7703. The address of the court is 717 Madison Place, N.W., Washington, DC 20439. The court must receive the petition no later than 30 days after you or your

representative receives this order.
FOR THE BOARD:
Signed: Robert E. Taylor
Clerk of the Board
Washington D.C.

**B. Initial decision of MSPB**

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
SAN FRANCISCO REGIONAL OFFICE

CLARENCE W. FRANKLIN, Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT, Agency

DOCKET NUMBER
SF08318610441

Date: June 18, 1986

Samuel A. Vitaro
Administrative Judge

DECISION

Appellant appealed a final decision of the Office of Personnel Management (OPM) denying his request for reconsideration on the basis that it was not timely filed. The Board has jurisdiction over such appeals. See 5 U.S.C. Sec. 8347 (d); and, 5 C.F.R. Sec. 831.110 (a). For the reasons stated below, OPM's decision is hereby AFFIRMED.

The issue involved in this appeal is narrow and straightforward: whether OPM's decision denying ap-

pellant's request for reconsideration based on untimeliness was unreasonable or constituted an abuse of discretion. See 5 C.F.R. Sec. 831.109; *Slater v. Office of Personnel Management,* 21 M.S.P.R. 405 (1984); and *Bradley v. Office of Personnel Management,* MSPB Docket No. SF08318310375 (Oct. 9, 1984) (amended Feb. 1, 1985).

The facts concerning this issue are undisputed. By letter dated January 3, 1986, OPM issued its initial decision denying appellant's application for disability retirement. In that decision, OPM informed the appellant that he could request reconsideration of the decision but that any request "must be received in OPM within thirty days of the date of this letter." Appellant received OPM's decision on January 12, 1986. He requested reconsideration by letter postmarked February 3, 1986 and received by OPM on February 7, 1986. OPM denied appellant's request for reconsideration on February 26, 1986 on the basis that it was not timely.

OPM regulations provide that a request for reconsideration must be received by OPM within thirty calendar days from the date of the original decision. 5 C.F.R. Sec. 831.109 (e) (1). OPM may extend the thirty day time limit if the applicant shows that he was not notified of the time limit and not otherwise aware of it or was prevented by circumstances beyond his control from making a timely request. 5 C.F.R. Sec. 831.109 (e) (2).

To be timely, appellant's request should have been received by OPM no later than February 3, 1986 (February 2 was a non-business day). It was not received until February 7, 1986, beyond the legal time limit. Appellant was notified of the time limit in OPM's initial decision. Moreover, even though provided an opportunity to do so by the Board, appellant has not alleged any circumstances beyond his control which prevented a timely filing. Thus, I find that OPM did not act unreasonably or abuse its discretion in denying appellant's request for reconsideration.

In making the above finding I reject appellant's arguments made in response to the Board Show Cause Order. There is no evidence that the nine day delay betweer

the date of the OPM initial decision and the date that it was received by appellant prevented him from timely filing. Similarly, even though common law would measure timeliness by the mailing date rather than the receipt date, OPM is governed not by common law but by enacted regulations. See 5 C.F.R. Sec. 831.109 (e) (1). Finally, appellant's argument that OPM is without "clean hands" because it did not more promptly issue an initial decision is unconvincing; I am unaware of any statutory or regulatory obligation violated by OPM or any conduct by OPM that would warrant the application of the "clean hands" doctrine. See, e.g., *Wells Fargo v. Stagecoach Properties*, 685 F.2d 302 (9th Cir. 1982).

The OPM decision is AFFIRMED.

## REVIEW RIGHTS

This initial decision of the Merit Systems Protection Board will become a final decision of the Board on July 22, 1986, unless a petition for review is filed by that date or the Board reopens the case on its own motion. 5 C.F.R. Sec. 1201.113-117. Any party or the Office of Personnel Management may seek to have it reviewed by the Board by filing a petition for review with:

Office of the Clerk
Merit Systems Protection Board
1120 Vermont Ave., N.W.
Washington, D.C. 20419

in accordance with 5 C.F.R. Sec. 1201.114 of the Board's regulations. The parties should note that, effective August 1, 1985, they are now required to serve any petition for review and any subsequent pleading on all other parties. For additional information, see 50 Federal Register 28895. The petition for review must be filed on or before July 22, 1986, and must set forth objections to the initial decision, supported by references to applicable laws, regulations, and the

record.

Any appellant adversely affected or aggrieved by a final decision of the Board may file a petition with the United States Court of Appeals for the Federal Circuit, if the Court has jurisdiction. 5 U.S.C. Sec. 7703. A petition may not be filed while the case is pending before the Board. To be timely, the petition for judicial review must be received by the Court within 30 days after the Board's decision becomes final. Petitions must be sent to:

U.S. Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439.

For the Board:
Signed Denis Wararhi
For Samuel A. Vitaro
Administrative Judge

**C. Final decision of OPM**

From: United States Office of Personnel Management, Washington, D.C. 20415.
February 26, 1986

To: Mr. Clarence W. Franklin, Box 6, Milford, CA 96121

Dear Mr. Franklin:
This is in response to your request for reconsideration of our disallowance of your application for retirement benefits under 5 U.S.C. 8336(c)(1).
Our records show that we sent you a disallowance notice on January 3, 1986. This notice advised you that if you wished to request reconsideration, you must have done so within 30 calendar days of the date of the letter.
Your request was received in the Office of Personnel Management on February 7, 1986, which was beyond the allowable time limit. In accordance with 5 CFR

831.109(e)(2), we can reconsider our original retirement determination only if you can show:

1. You were not notified of the time limit and were not otherwise aware of it, or
2. You were prevented by circumstances beyond your control from making the request within the time limit.

Since you have not presented sufficient evidence to show that you were unable to file a request for reconsideration within the time limit provided by regulation, your claim has been dismissed.

This is our final decision. However, you have a further appeal right. If you wish to exercise this right, you must file an appeal with the Merit System Protection Board within 20 calendar days from the day on which you receive this decision.

Should you wish to initiate an appeal of this decision, mail it directly to:

Regional Director
Merit Systems Protection Board
San Francisco Regional Office
525 Market Street, Room 2800
San Francisco, California 94105

A copy of the Merit Systems Protection Board's regulations is enclosed for your information.

Sincerely,
Margaret A. Wrinkle
Reconsideration Branch-6c
Disability and Special Entitlements Division

**D. Second initial decision of OPM**

United States Office of Personnel Management,
Washington D.C. 20415
January 3, 1986

Dear Mr. Franklin:

This refers to your letter concerning coverage under 5 U.S.C. 8336(c)(1) of past service you performed as a

Police Officer at the Department of the Army.

5 C.F.R. 831.903 defines "law enforcement officer" as - an employee whose primary duties, as set forth in the official position description, require the investigation, apprehension or detention of persons suspected or convicted of offenses against the criminal laws of the United States. Law enforcement officer does not include an employee in a position the primary and regular duties of which involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected of violating the criminal laws of the United States...(Emphasis added.) From the information that was submitted, we are unable to determine that your duties could be creditable for coverage under U.S.C. 8336(c). The Office of Personnel Management has consistently held that police work can not be creditable for coverage under the referenced provision.

In general, it has been shown that Police Officers employed at military installations do not primarily perform the types of functions stipulated in the law as "law enforcement officer" duties. Rather, these employees are primarily concerned with the protection of life and property and the maintenance of law and order. These duties are overwhelmingly those of preventive security rather than law enforcement. Any involvement in the investigation, apprehension, or detention of persons suspected or convicted of offenses against the Federal criminal code would be, for the most part only incidental to the primary duties of the position.

We have reviewed the information you had provided, the documents in your casefile and in your Official Personnel Folder. It has been determined that the position of Police Officer (formerly called Policeman) from September 15, 1959 to September 8, 1983 (effective date of disability retirement) does not meet the definition of a law enforcement officer as defined above. Therefore, credit is denied for your service for purposes of retirement under

section 8336(c).
We regret that the facts in this case preclude a more favorable reply.
RECONSIDERATION
If you believe that you can show that your service as a police officer from September 15, 1959 to September 8, 1983 is creditable under Section 8336(c), you may request reconsideration of this decision. Your request must be received in OPM within 30 days of the date of this letter. The request must be in writing, must include your full name and original signature, address, date of birth, and claim number, and must state the basis for the request.
If you plan to submit additional evidence but it is unavailable, do not delay your request. Just state in the request that additional evidence will be submitted at a later date.
Your request for reconsideration should be addressed to:
U.S. Office of Personnel Management
Employee Service and Records Center
Boyers, Pennsylvania 16017
Attention: Reconsideration Branch, 6c
Disability and Special Entitlements Division.
Sincerely,
Nancy Wolf
Initial Claims Branch, Disability and Special Entitlements Division.

**E. First initial decision of OPM**

United States of America Office of Personnel Management, Washington D.C. 20415
To: Honorable Norman D. Shumway
U.S. House of Representatives
1203 Longworth House Office Building
Washington, D.C. 20515

Nov. 2, 1984

Dear Mr. Shumway:
This is in response to your letter in the interest of your

constituent, Mr. Clarence W. Franklin. Mr. Franklin was inquiring about retirement under the special provision for law enforcement officers and firefighters as it applies to federal policemen at the Sierra Army Depot in Herlong, California.

Section 8336(c)(1) of Title 5 of the U.S. Code as amended by Public Law 93-350, approved July 12, 1974, provided a special retirement benefit to the employee "who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totalling 20 years." Section 8331(20) of Title 5 of the U.S. Code defines law enforcement officer as follows:

"Law enforcement officer includes an employee whose primary duties, as set forth in the official position description, require the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States. Law enforcement officer does not include an employee in a position the primary and regular duties of which involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected of violating the criminal laws of the United States, or whose duties only occasionally or incidentally require the investigation, apprehension, or detention of persons suspected or convicted of violating the criminal laws of the United States."

Based on the above-cited regulations, the duties of a police officer at the Sierra Army Depot would not qualify the position for coverage as a "law enforcement officer" for purposes of retirement under Section 8336(c). Rather, the primary duties of a police officer are those which are excluded from coverage under this provision, such as maintaining law and order and protecting life and property. Any involvement in the investigation, apprehension, or detention of persons suspected or convicted of offenses against criminal laws of the United States is

incidental to the primary purpose of the position.

In addition, on December 19, 1974, the Civilian Personnel Office at the Sierra Army Depot submitted the positions of Policeman and Supervisory Policeman for general coverage under section 8336(c). These position descriptions were viewed and it was determined that the incumbents of the positions perform police duties with assignments primarily involving the protection of life and property. Based on the duties of the positions it was determined that the primary duties of the incumbents of these positions were not those of a "law enforcement officer" as defined in the law. Therefore, these positions were denied general coverage under Section "6(c)." Based on the fact that the Office of Personnel Management has ruled that service in these positions is not creditable for retirement purposes under the special provision for law enforcement officers, Section 8336(c), Mr. Franklin's personnel officer was correct in advising him that he did not qualify to retire under this provision. His personnel officer was also correct in not submitting Mr. Franklin's request to the Office of Personnel Management. The appropriate administrative authority at an agency has the responsibility for screening its positions for those jobs which seem to meet the definition of law enforcement officer and submitting them to OPM for its concurrence.

Mr. Franklin may request reconsideration of this decision within 30 days of the date of this letter. A copy of the reconsideration procedures is enclosed.

We regret that the facts in Mr. Franklin's case preclude a more favorable reply. If we can be of further assistance, please let us know.

Sincerely,

Victor J. Roy, Chief Retirement Claims Division

Civil Service Retirement System
Washington D.C. 20415

REQUEST FOR RECONSIDERATION

This notice gives the procedures for you to use if you wish to request reconsideration of an initial decision made by an office of the Compensation Group of the Office of Personnel Management (OPM) in any case where the decision:

--Affects your rights or interests under the Civil Service Retirement System, **except** in matters pertaining to disability retirement (5 C.F.R., Part 831);

--Denies you basic or optional life insurance coverage under the Federal Employees Group Life Insurance Program or denies you the right to change your post-retirement basic life insurance coverage after retirement (5 C.F.R., Parts 870, 871, 872, and 873);

--Refuses your request to enroll or change enrollment in the Federal Employees Health Benefits Program (5 C.F.R., Parts 890 and 891); or

--Refuses your request to permit coverage of someone as a family member under the Federal Employees Health Benefits Program (5 C.F.R., Parts 890 and 891).

Please note: The decision that you want reconsidered must be an **initial** decision that was rendered by OPM **in writing** and the decision must have stated **your right** to reconsideration.

The procedures for requesting reconsideration--as established by Federal regulation--are as follows:

1. Make your request for reconsideration in writing; include your name, address, date of birth, claim number (if appropriate), name of the plan you are enrolled in (if appropriate), and your reasons for the request.

2. You must file your request with OPM within **30 days** of the date you received OPM's initial decision. (OPM can extend the time limit only if you can show that you were not aware of the time limit, were not notified of it, or were prevented from writing by a cause beyond your control.)

3. Send your request for consideration to: Office of

Personnel Management, Employee Service and Records Center, Post Office Box 107, Boyers, PA 16017.

After reconsideration, OPM will send you a final decision in writing. We will send copies of this decision to any competing claimants or to your employing office, if applicable.

Please note that these instructions do not apply to:

1. Reconsideration of a decision to collect erroneously overpaid annuity. OPM will give you separate specific instructions and information whenever such a decision is made.
2. Reconsideration of a claim denied by your health insurance carrier. All such requests for reconsideration should be sent to the address shown in your plan brochure.
3. Reconsideration of disability retirement decision. OPM will give you separate instructions and information in these cases.

BRI 46-46
Rev. December 1983
Previous editions are not usable.

**F. Final decision of CSC re. Warren Joseph Young**

United States Civil Service Commission
Appeals Review Board
Washington, D.C. 20415

DECISION

In the matter of Warren Joseph Young.
Type Case: Retirement
Before: Roel, Zwirn and Tillman, Board members.

INTRODUCTION

The appellant has appealed from the decision of the Commission's Bureau of Retirement, Insurance and Occupational Health that service performed by appellant as Policeman and Security Officer at the Sierra Army Depot does not qualify him for retirement under section 8336(c) of Title 5, United States Code.

## STATEMENT OF THE CASE

The appellant is currently employed by the Department of the Army, Sierra Army Depot, Herlong, California, in the position of Security Officer, GS-080-11. The record in his case indicates that he has been employed in positions of Policeman, Supervisory Policeman, and Security Officer from September 15, 1972 to the present. In December 1974, the Personnel Officer of the Depot requested that the Bureau of Retirement, Insurance, and Occupational Health make a determination as to whether service in these positions meet the criteria for special retirement eligibility as law enforcement officer. The Bureau, after review of job descriptions for these positions, determined that service in these positions did not qualify the incumbent for retirement under the provisions of section 8336(c), which provides for special retirement benefits to Federal employees separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter.

In a subsequent letter dated June 30, 1975, the agency submitted to the Bureau new job descriptions covering certain of these positions at the Sierra Army Depot for further review and a new determination. The agency also submitted appellant's application for retirement should the Bureau make a determination that he is qualifed for coverage under section 8336(c).

## DECISION OF THE BUREAU OF RETIREMENT, INSURANCE, AND OCCUPATIONAL HEALTH

In its decision of August 14, 1975, the Bureau cited the definition of law enforcement officer, as set forth in section 8331(20), as an employee the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or whose duties only occasionally or incidentally require the investigation, apprehension, or detention of persons suspected or convicted of violating the criminal laws of the

United States.

The Bureau concluded that the duties of policemen at the Sierra Army Depot and the position of security officer which the appellant occupied do not meet the definition of law enforcement officer.

REPRESENTATIONS TO THE BOARD

In his appeal to the Board, the appellant contends that the Bureau's decision is subjective and not only adversely affects him personally but unjustly compromises future retirements of other police officers assigned to the Security Division of the Depot. He maintained that 22 of a total of 59 police officers at the Depot are primarily engaged in investigation, apprehension or detention of individuals suspected or convicted of offenses against the criminal laws of the United States and therefore are subject to the definition of law enforcement officer.

ANALYSIS AND FINDINGS

The Board has reviewed the entire record in this case and finds no evidence to show that the same hazards to which law enforcement officers are subjected are inherent in the position held by appellant. While the appellant may be required to perform some law enforcement duties, any criminal investigations are only intermittent and incidental to his primary duties. As a result, the Board finds, as did the Bureau, that the appellant's service as a security officer is not creditable for retirement under 5 United States Code 8336(c) for the reason that it has not been shown that such service involves primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States.

DECISION

In view of the foregoing, the Board hereby affirms the previous decision of the Bureau of Retirement, Insurance, and Occupational Health in disapproving appellant's application for retirement under section 8336(c) of Title 5, United States Code.

Under the Commission's regulations, the decision of the

Board is final and there is no further right of administrative appeal.
For the Board:
Herman D. Staiman
Chairman May 7, 1976

**.1 (j) (iii) Copy of judgment appealed from**

Note: This opinion has not been prepared for publication in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
87-3129

CLARENCE W. FRANKLIN, Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT, Respondent.

DECIDED: June 8, 1987

Before MARKEY, Chief Judge, NEWMAN and BISSELL, Circuit Judges. PER CURIAM.

DECISION

The decision of the Merit Systems Protection Board (board), Docket No. SF08318610441, affirming Office of Personnel Management's (OPM's) decision denying Clarence W. Franklin's (Franklin's) request for reconsideration based on untimeliness, is affirmed.

OPINION

The record shows that Franklin seeks a retirement annuity under 5 U.S.C. Sec. 8336(c)(1). Congress

authorized OPM to administer that section, and to promulgate "such regulations as are necessary and proper" to carry it out. 5 U.S.C. Sec. 8347(a). One of the regulations OPM has promulgated is 5 C.F.R. Sec. 831.109(e)(1), which says that "A request for reconsideration must be received by OPM within 30 calendar days from the date of the original decision." If, as Franklin argues, California common or statutory law conflicts with that regulation, the federal law controls under the Supremacy Clause of the U.S. Constitution, art. VI, Cl. 2. EG., *Free v. Bland*, 369 U.S. 663, 668 (1962); *Roebling v. Office of Personnel Management*, 788 F.2d 1544, 1546-48 (Fed. Cir. 1986).

Franklin does not argue that the board incorrectly decided the facts. Accordingly, we affirm on the basis of the board's opinion because we do not find the decision arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or obtained without procedures required by law, rule, or regulation having been followed, or unsupported by substantial evidence. 5 U.S.C. SEc. 7703(c) (1982); see *Rowe v. Merit Sys. Protection Bd.*, 802 F.2d 434, 437-38 (Fed. Cir. 1986) (affirming board's decision not to waive 20-day time limit where appeal was filed four days late).
No. 87-3129

**.1 (j) (iv) Copy of Notice of Appeal**

The UNITED STATES
COURT OF APPEALS
for the FEDERAL CIRCUIT

CLARENCE WILLARD FRANKLIN, Appellant,
v.
OFFICE OF PERSONNEL MANAGEMENT,
Respondent

Notice of Appeal
No. 87-3129

NOTICE OF APPEAL

Notice is hereby given that Clarence Willard Franklin, appellant named above, does hereby appeal to the United States Supreme Court from the final judgment affirming Merit System Protection Board decision dismissing appellant's application for retirement annuity entered in this action on June 8, 1987.

The appellant further states that this appeal is taken under the following statutes: 5 USC 7703(a)(1); 5 USC 7703(c); 28 USC 1254(2); and 28 USC 1254(3).

Respectfully submitted,
Signed, Clarence Willard Franklin, pro se
Cedar Tree Farm
Milford, CA 96121
August 11, 1987

**.1 (j) (v) Other appended materials**

A. Cardiology report and related documents
B. Definition and duties of Police Officer
GS 083 category
C. Stats cited, etc.
D. Index

**A. (1) Disallowance of Disability Annuity**

United States
Office of Personnel Management
Retirement and Insurance Programs
Washington, D.C. 20415

September 21, 1981
Sierra Army Depot
ATTN: Personnel Officer
Herlong, CA 96113

Claim Number
CSA 2 444 527

Social Security Account No.
135-20-3554

DISABILITY RETIREMENT NOT APPROVED
NAME (Last) (First) (Middle)
Franklin, Clarence W.

DATE OF BIRTH
06-06-26

POSITION
Police Officer

DEPARTMENT OR AGENCY
Department of the Army

LOCATION
Herlong, CA 96113

The above-named employee's application for annuity under the Civil Service Retirement System has been disallowed for the reason checked below:

1. Decision for disallowance is based on additional medical evidence from an authoritative source.
2. Medical disorder involved is not disqualifying for full performance of duties of the employee's position under qualifications standards.
3. Applicant did not become disabled during last position occupied.

If your medical officer desires further information on the reason for disallowance checked above, he is invited to communicate directly with OPM's responsible medical officer. Our medical officer will furnish him a full explanation of the reasons for rejection in relation to the civil service program.)

4. Applicant has less than 5 years creditable civilian service, the minimum required for title to annuity.
5. Dismissed at request of applicant.
6. Dismissed for lack of evidence because applicant did not report for medical examination.
7. ✓ The applicant has not established the presence of a medical condition which has caused a deficiency in service.
RETIREMENT CLAIMS DIVISION

**A. (2.) Physician's letter**

Cardiology Consultants
850 Mill Street, Suite 201
Reno, Nevada 89502
Telephone (702) 323-2741

Robert J. Barnet, M.D.
Theodore B. Berndt, M.D.
Richard P. Ganchan, M.D.
John S. Williamson, M.D.
Jerry N. Zebrack, M.D.
Diplomates of American Board of Internal Medicine and Subspecialty Board of Cardivascular Diseases.

October 16, 1981

Clarence W. Franklin
Cedar Tree Farm
Milford, CA 96121

Dear Mr. Franklin:

I am writing this letter to respond to your request for medical information regarding your police officer duties. First of all, your cardiac problem of sudden fast beating of your heart is aggravated by strenuous physical exertion and that should be avoided, specifically significant lifting or isometric exercise of any kind such as requiring you to exert a great deal of force against a high resistence.

I also agree that your gastroesophageal reflux causes

some of your retrosternal distress. This problem is the reflux of stomach acid into the lower third of your esophagus. The lining of the stomach is able to tolerate high concentrations of acid but the lining of the esophagus is not and as a result it gets irritated. Your hiatus hernia is associated with this problem, but there is a great deal of medical controversy as to whether the hiatus hernia itself has anything to do with the reflux or is just an incidental association, but certainly you do have proven gastroesophageal reflux.

With respect to the shell fragment wound and your prostate problem, I am afraid I am inadequately trained in these aspects of medicine to comment on your question. Certainly a prostate problem can cause diffuse weakness if it is associated with a urinary tract infection, but the treatment for this consists of surveillance of your urine to make sure an infection is not developing and correction of the prostate problem as needed. For this you would need to see an urologist. I would certainly advise with respect to the shell fragment wound, that you maintain close contact with the Veteran's Administration System.

With respect to the degree of your disability at present, you remain partially disabled from the point of your being unable to adequately perform certain degrees of strenuous physical exertion and if your regular police work requires isometric exertion such as carrying the weight of a person, performing strenuous exertion against marked resistence or other forms of heavy lifting or straining, then you are unable to do it and should be on more limited duty. We should certainly however, see one another periodically for a re-evaluation of this problem.

I hope this information is satisfactory for your needs. If not, please call me and I will attempt to answer any continuing questions.

Sincerely yours,
Signed, John S. Williamson, M.D.

## A. (3) Excerpt of Cardiology Reports

174, up 1. BP: 130-90. Interval History. He has had occasional palpitations recurring. He has had no other cardiovascular symptoms.
Cardiovascular Physical Examination today is unchanged.
IMP: 1) Paroxysmal supraventricular tachycardia with exercised-induced ventricular ectopic activity as well with very frequent premature ventricular beats, post exertion.
2) Hiatus hernia with gastroesophageal reflux and intermittent symptoms of esophagitis and possible esophageal spasm.
3) History of prostatism.
4) Left arm pain associated with shell fragment.
PLAN. Corgard, 20 mg. daily will be tried again. He had some gastrointestinal intolerance, he thinks, to the medicines but it will be renewed. He is once again restricted from any significant isometric physical exertion or strenuous aerobic exertion and therefore remains disabled from his job. He will return in 4 months and sooner if needed for any change in status. The risk of withdrawing medicine and the use of the emergency medical system were reviewed with him.
Signed, John S. Williamson, M.D.

September 24, 1982
Wt. 177, up 3. Blood pressure 110-70. Interval hx. He has continued to have intermittent palpitations. He has had occasional retrosternal chest discomfort as well.
Cardiovascular P. E. Today is unchanged. Heart rate is unchanged. Heart rate is 80 and occasional premature beats are auscultated which seem to be mixed, atrial and ventricular beats and are so demonstrated on rhythm strip. He has apparently not been taking his Corgard on a regular basis because he was uncertain about the instructions.
IMP: 1) Paroxysmal supraventricular tachycardia with exercise induced ventricular arrhythmias and frequent

premature ventricular beats at rest, as well, associated with chest pain, intermittently suggestive of angina pectoris and borderline radiographic response to exercise, possibly compatible with myocardial ischemia.
Hiatus hernia, with gastroesophageal reflux and intermittent esophageal spasm.
History of prostatism.
Left arm pain associated with shell fragment.
PLAN: Corgard, 20 mg. daily was again discussed. The risk of medication of withdrawal was reviewed. The use of the emergency medical system was reviewed. Nitroglycerin .4 mg. sublingually if needed for chest pain will be reinstitued if chest pain recurs. His GI regimen will be continued with anti-reflux precautions. - continued -
He remains disabled from his job because of his inability to lift any significant weight at all, certainly anything greater than 25 lbs. and because of his inability to run at all without provoking the arrhythmia as documented on his treadmill test. He would be fit for sedentary employment if such could be found. He is certainly disabled from his job doing police work.
Signed, John S. Williamson, M.D.

**A. (4) Letter Confirming Submission**

October 5, 1982
Cardiology Consultants
Robert J. Barnet, M.D.
Theodore B. Berndt, M.D.
Richard P. Ganchan, M.D.
John S. Williamson, M.D.
Jerry N. Zebrack, M.D.
Diplomates of American Board of Internal Medicine and Subspecialty Board of Cardiovascular Diseases.
Medical Center Plaza, 85 Kirman Avenue, Suite 202, Reno, Nevada 89502-1390, Telephone (702) 323-2741

C.W. Franklin
Cedar Tree Farm
P.O. Box 6
Milford, California 96121

Dear Mr. Franklin:

The two page report which I read to you prohibiting isometric exertion or strenuous aerobic exertion was contained in the letter which I mailed to you. Please check your records again and if you need another copy let me know. I will be happy to send it, but that is, in fact, the report which was contained within the progress notes of that date. The first date at which I sent your records to your employer was 2-9-81 and that was to Marne Swift Personnel Management Specialist, technical services office at the Sierra Army Depot. All subsequent communications have been with that agency based on the job description which they furnished at the time. I do not have records of their most recent information request, but these are sent out in a timely fashion as soon as the request is received. If they need any further information, please let them know and have them send such request with your authorization to release it to me and I will be happy to do so. Thank you very much.

Sincerely,
Signed John S. Williamson, M.D.

**B. Definition of Police Duties**

UNITED STATES CIVIL
SERVICE COMMISSION

GS-083

...officers protect against criminal and noncriminal acts, both willful and inadvertent. They prevent, detect, and investigate accidents, crimes and misconduct involving misdemeanors, felonies, and other violations. They arrest violators; assist in the prosecution of criminals; and serve

as a source of aid and comfort to persons who find themselves in unexpected emergency situations. As a secondary responsibility, police officers also protect public property.

A full range of police services is provided covering residential areas, airports, parks, reservations, roads and highways, commercial and industrial areas, and similar facilities under Federal control. Although these areas in some cases may have few residents, thousands of private citizens and vehicles may use the roads and facilities daily.

Police officers in Federal jurisdictions enforce a wide variety of Federal, State, county, and municipal statutes, laws, and ordinances, and agency regulations. Police officers must be highly trained in the legal authorities under which they operate. They must be cognizant of the rights of suspects, the laws of search and seizure, and the civil rights of citizens. Increased concern for insuring and preserving the civil rights of all citizens has added a new dimension to the work of police officers. This is especially true in controlling crowds and in exercising arrest authority.

Police officers are commissioned, deputized, appointed, or otherwise designated by public law, statute, or other official act as agency and-or local law enforcement officers. Police officers exercise arrest authority as follows:

--Arrest, under a warrant, any person accused of having committed any offense against the laws of the United States or against any rule or regulation prescribed under pertinent law;

--Arrest, without a warrant, any person committing any such offense in the presence of a member of the police force; or

--Arrest, without a warrant, any person where there are reasonable grounds to believe that person has committed a felony.

Police officers carry firearms or other weapons as authorized. They accept or arrange for deposit of

collateral for appearance of offenders in court or before an appropriate U.S. Commissioner.
TS 19
August 1974

**C. STATS CITED**

Text for .1 (f) on Page 10

**A. 5 USC 8336 Immediate Retirement**

(c) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years, is entitled to an annuity.

**B. 5 USC 8335 Mandatory separation**

(b) A law enforcement officer or a firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title (5 USCS Sec. 8336(c)) shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

**C. 18 USC 2071. Concealment, removal, or mutilation generally**

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than $2,000 or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than $2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States.

(June 25, 1948, ch 645, Sec. 1, 62 Stat. 795.)

**D. 18 USC 241. Conspiracy against rights of citizens**

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or...

**E. 5 USC 8331. Employees**

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of--

## F. 5 USCS 552. Agencies Generally

Sec. 552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter.

**G. (1)**

## CONSTITUTION OF THE UNITED STATES OF AMERICA

**Art I, sec. 9 (Powers denied Congress.)**

(1) The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

(2) The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(3) No Bill of attainder or ex post facto Law shall be passed.

(4) No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

(5) No Tax or Duty shall be laid on Articles exported from any State.

(6) No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

(7) No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

(8) No Title of Nobility shall be granted by the United States: and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

**(2.)**

**Art. III, sec. 1 (Judicial power.)**

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Sec. 2 (Extend of judicial power - Supreme Court - Trial and places of trial.)

(1) The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of

the United States, and Treaties made, or which shall be made, under their Authority;--to all cases affecting ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

(2) In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

(3) The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crime shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

(3)

## AMENDMENT 5

**Criminal actions - Provisions concerning - Due process of law and just compensation clauses.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(4)

AMENDMENT 7

**Trail by jury in civil cases**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(5)

AMENDMENT 8

**Bail-Punishment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(6)

AMENDMENT 9

**Rights retained by people.**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(7)

AMENDMENT 11

**Suits against states - Restriction of judicial power.**

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

**H. California Civil Code Sec. 1582**
**Communication; acceptance of proposal**

Mode of communicating acceptance of proposal. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted. (Enacted 1872.)

**I. California Civil Code Sec. 1583. Communication; completion.**

When communication deemed complete. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section. (Enacted 1872.)

**J. (U.S. Constitution art. 1, sect. 8, cl. 17)**

(17) To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings. And,

**K. Div. 1**

**(Territorial Jurisdiction)**

**California Government Code (Cession of Sovereignty)**
**Sec. 126 subsection (e)**
**Historical Note**

"(e) In granting this consent, the Legislature and the State reserve jurisdiction on and over the land for the execution of civil process and criminal process in all cases, and the State's entire power of taxation including that of each State agency, county, city, city and county, political subdivision or public district of or in the State; and reserves to all persons residing on such land all civil and political rights, including the right of suffrage, which they might have were this consent not given."

**L. 5 USC. Sec. 8347.**
**Administration; regulations**

(d) An administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter (5 USCS Sec. 8331 et seq.) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

**M. 5 USCS Sec. 7703 Judicial review of decisions**

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(c) In any case filed in the United States Court of Claims or a United States court of appeals, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be--

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulation having been follows; or...

**N. 5 USC 8347 (a) Administration; regulations**

The Office of Personnel Management shall administer this subchapter (5 USCS sec. 8331 et seq). Except as otherwise provided herein, the Office shall perform, or cause to be performed, such acts & prescribe such regulations as are necessary & proper to carry out this subchapter (5 USCS sec. 8331 et seq).

**O. Article VI. - Miscellaneous Provisions**

**Clause**

1. Prior debts valid under Constitution.
2. Supreme law.
3. Oath of office.

**ARTICLE VI - U.S. CONSTITUTION**

**Clause 2. Supreme Law**

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**P. 28 USC. Sec. 1652**

**State laws as rules of decision**

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded

as rules of decision in civil actions in the courts of the United States, in cases where they apply.
(June 25, 1948, c. 646, sec. 1, 62 Stat. 944.)

**Q. Review. 28 USC 2101**

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

**R. 28 USC 1254**

**Courts of appeals; appeal; certified questions.**

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

**S.**

## CONSTITUTION OF THE UNITED STATES OF AMERICA

### PREAMBLE

We the people of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

## INDEX


| | Page |
|---|---|
| Appeal, Notice of .1 (j) (iv) | 34-35 |
| Appendix .1 (j) | 18-54 |
| Authorities, Table of .1 (c) (2) | 4 |
| Brevity of Jurisdictional Statement of .3 | 54 |
| Cardiology Report | 35-41 |
| Cases, Table of .1 (c) (3) | 4-8 |
| Constitution, Statutes, Treaties, etc. | 10-11 |
| Contents, Table of .1 (c) (1) | 3-4 |
| Court in which Notice Filed | 9 |
| Dates of Entry & Notice of Appeal .1 (e) (ii) | 9 |
| Judgement Appealed .1 (j) (iii) | 33-34 |
| Jurisdiction, Appealed | 18 |
| Jurisdiction, Statutes of | 10 |

Nature of Case .1 (e) (i) . . . . . 9

Other Opinions, etc. .1 (j) (ii) . . . . . 19-33

Parties, List of .1 (b) . . . . . 3
Police, Defined, etc. (Appendix) . . . . . 41-43
Production in Confirmity to Rule 33 of .2 . . . . . 54

Questions Presented .1 (a) . . . . . 2-3

Reasons for Review .1 (h) . . . . . 15-18
Reports Delivered Below .1 (d) . . . . . 8-9

Statement of the Case .1 (g) . . . . . 11-15
Statutes, Cited .1 (f) . . . . . 10-11
Statutes, Text of (Appendix) . . . . . 43-52

**.2 Production in Comformity to Rule 33**

Printed by Feather Publishing Co., Inc., Quincy, CA 95971, according to customary printing practices and instructions given.

**.3 Brevity of Jurisdictional Statement**

Statement pages did not exceed 20 page limitation and total pages did not exceed 56 pages and is therefore in conformity to brevity specified.